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**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA, For the)
Use and Benefit of RENTAL SOLUTIONS,)
LLC,)

Plaintiff.

VS.

CENTRAL VALLEY CONSTRUCTION,
INC., TPA-CKY JOINT VENTURE, CKY,
INC., TAN PHUNG & ASSOCIATES,
AMERICAN CONTRACTORS INDEMNITY
COMPANY, and DOES 1-20, inclusive.

Defendants.

Civil Action File No. C-07-4929 SI

**SUPPLEMENTAL JOINT CASE
MANAGEMENT CONFERENCE
STATEMENT**

1
2 Plaintiff RENTAL SOLUTIONS, LLC ("RENTAL SOLUTIONS") and Defendants
3 TPA-CKY JOINT VENTURE, ("TPA-CKY JOINT VENTURE") TAN PHUNG &
4 ASSOCIATES ("TPA"), CKY, INC. ("CKY"), AMERICAN CONTRACTORS INDEMNITY
5 COMPANY ("AMERICAN") and CENTRAL VALLEY CONSTRUCTION ENGINEERING
6 COMPANY, INC. ("CENTRAL VALLEY") hereby file the following joint statement pursuant
7 to Civil Local Rule 16-9:

8 1. **Jurisdiction and Service.** The Court has federal question jurisdiction to hear the
9 claims and counterclaims in this matter pursuant to the Miller Act (40 U.S.C. §§ 270a-270e), and
10 28 U.S.C. §§1331, 1337. This Court also has supplemental jurisdiction pursuant to 28 U.S.C.
11 §1367. All Defendants have now been served and have appeared in the instant action.

12 2. **Facts.** On or about June 30, 2005, Defendants CKY and TPA were awarded a
13 joint venture contract as TPA-CKY JOINT VENTURE by the United States of America through
14 the United States Department of the Army Corps of Engineers, more particularly identified as
15 Contract No. W91238-05-C-0019 (the "Prime Contract,") for flood control work on the Napa
16 River, in Napa, California.

17 On or about July 21, 2005, Defendant TPA-CKY JOINT VENTURE, as principal, and
18 Defendant AMERICAN, as surety, executed and delivered Payment Bond, number 234122,
19 guaranteeing the payment to all persons supplying labor, equipment and materials in the
20 prosecution of the work provided for in the Prime Contract and any and all duly authorized
21 modifications thereof, which bond was executed and delivered as foresaid in accordance with the
22 provisions of an act of the Legislature of the United States of American, dated August 24, 1935,
23 49 Stat. 793, as amended (40 U.S.C. §§ 270a-270e).
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1 During the course of the performance and prosecution of the work provided for in the
2 Prime Contract, Defendant TPA-CKY JOINT VENTURE entered into a subcontract with
3 Defendant CENTRAL VALLEY for the performance and prosecution of a part of the work
4 described in the general contract between Defendant TPA-CKY JOINT VENTURE and the
5 United States of America. Between July 2006 and October 2006, Plaintiff RENTAL
6 SOLUTIONS rented equipment to Defendant CENTRAL VALLEY that was used in the
7 prosecution of the work provided for in the Prime Contract. Defendant CENTRAL VALLEY
8 has failed and refused to pay the monies owing to Plaintiff RENTAL SOLUTIONS for the rental
9 equipment.

10 3. **Legal Issues.** At the present time, the parties filing this Supplemental Joint Case
11 Management Conference Statement are unaware of any disputed points of law.

12 4. **Motions.** On January 16, 2008, Plaintiff RENTAL SOLUTIONS filed an
13 Administrative Motion to Consolidate the instant action with Civil Action File No. C-07-1568
14 MJJ, ECCO EQUIPMENT CORPORATION vs. CENTRAL VALLEY CONSTRUCTION, et.
15 al. To date, no order has been issued regarding this motion.

16 5. **Amendment of Pleadings.** No amendment of the pleadings is contemplated at this
17 time.

18 6. **Evidence Preservation.** The parties jointly filing this supplemental statement have
19 preserved all relevant evidence.

20 7. **Disclosures.** Plaintiff timely compiled with the initial disclosure requirements
21 under Federal Rule of Civil Procedure 26(f). While Defendants CKY, TPA, TPA-CKY JOINT
22 VENTURE and AMERICAN timely identified witness individual likely to have discoverable
23 information, said Defendants have not yet identified or produced the documents in their
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1 possession, custody, or control that support their claims or defenses as required under Federal
2 Rule 26. On February 6, 2008, Plaintiff sent a meet and confer letter to said Defendants counsel
3 regarding this issue.

4 To date, no disclosures have been made by Defendant CENTRAL VALLEY, as it did not
5 appear in the instant action until February 15, 2008.

6 8. **Discovery.** No discovery has been conducted to date. The parties to this
7 supplemental joint statement propose no limitations or modifications of the rules of discovery,
8 other than as may be set forth in the proposed discovery plan set forth below.

9 The parties propose the following discovery plan:

10 **Interrogatories:** Plaintiff RENTAL SOLUTIONS and Defendants TPA-CKY
11 JOINT VENTURE, CKY, TPA, and AMERICAN (collectively), and Defendant CENTRAL
12 VALLEY shall each be allowed 50 written interrogatories pursuant to FRCP 33.

13 **Requests for Admission.** Plaintiff RENTAL SOLUTIONS and Defendants TPA-
14 CKY JOINT VENTURE, CKY, TPA and AMERICAN (collectively), and Defendant
15 CENTRAL VALLEY shall each be allowed 50 requests for admission under FRCP 33.

16 **Depositions:** Plaintiff RENTAL SOLUTIONS and Defendants TPA-CKY JOINT
17 VENTURE, CKY, TPA and AMERICAN (collectively), and Defendant CENTRAL VALLEY
18 shall each be allowed up to 6 depositions on oral examination.

19 **Requests for Production.** Plaintiff RENTAL SOLUTIONS and Defendants TPA-
20 CKY JOINT VENTURE, CKY, TPA and AMERICAN (collectively), and Defendant
21 CENTRAL VALLEY shall each be allowed 25 requests for production under FRCP 34.

22 9. **Class Action.** Not applicable to the instant action.
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1 10. **Related Cases.** As reported in the Notice of Pendency of Related Action filed at
2 the outset of this matter, a related action, Civil Action File No. C 07-01568 MJJ, was previously
3 filed in the United States District Court, Northern District of California, San Francisco Division.
4 Said related suit was filed by Plaintiff ECCO EQUIPMENT CORPORATION against
5 Defendants CENTRAL VALLEY, CKY, TPA and AMERICAN for enforcement of the same
6 Miller Act Payment Bond that Plaintiff RENTAL SOLUTIONS, LLC seeks to enforce in the
7 instant action.

8 As discussed above, on January 16, 2008, Plaintiff RENTAL SOLUTION filed an
9 Administrative Motion to Consolidate the instant action with Civil Action File No. C 07-01568
10 MJJ. To date, no order has been issued in regard to this motion.

11 11. **Relief.** Plaintiff RENTAL SOLUTIONS seeks rentals totaling \$41,629.75, after
12 deducting all just credits and offsets, plus statutory interest, late charges, attorney's fees and
13 costs of suit herein incurred, and for such other and further relief as the Court deems just and
14 equitable. Defendant TPA-CKY JOINT VENTURE has filed a cross-action and it seeks express
15 and implied indemnity from Defendant CENTRAL VALLEY for all amounts recovered against
16 it in this action.

17 12. **ADR.** Plaintiff RENTAL SOLUTIONS and Defendants CKY, TPA, TPA-CKY
18 JOINT VENTURE and AMERICAN have complied with ADR L.R. 3-5, and said parties to this
19 statement have agreed to mediate the instant dispute. There have also been some preliminary
20 settlement talks between Plaintiff RENTAL SOLUTIONS and Defendants CKY, TPA, TPA-
21 CKY JOINT VENTURE and AMERICAN.

22 Defendant CENTRAL VALLEY did not appear in the instant action until February 15,
23 2008 and it will comply with ADR L.R. 3-5.
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1 13. **Consent to Magistrate Judge.** Plaintiff RENTAL SOLUTIONS and Defendants
2 CKY, TPA, TPA-CKY JOINT VENTURE and AMERICAN did not consent to a Magistrate
3 Judge, and the instant action was transferred to Judge Marilyn Hall Patel.

4 14. **Other References.** The parties do not believe that this matter is suitable for
5 reference to binding arbitration, a special master or the Judicial Panel on Multidistrict Litigation.

6 15. **Narrowing of Issues.** At the present time, the parties to this joint statement are
7 unaware of any issues that can be narrowed by agreement or motion. The parties will work in
8 good faith to stipulate to all uncontested facts prior to the time of trial. The parties do not
9 anticipate the need to bifurcate any issues, claims or defenses.

10 16. **Expedited Schedule.** The parties to this statement do not believe that this matter
11 can be handled on expedited basis.

12 17. **Scheduling.** The parties to this statement propose the following scheduling
13 deadlines.
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15 **Discovery Cut-Off Date: September 1, 2008**

16 **Last Date for Dispositive Motions to be Heard: November 1, 2008**

17 **Final Pretrial Conference: January 15, 2009**

18 **Trial Date: February 3, 2009**

19 18. **Trial:** This case shall be tried to the Court. The parties to this joint statement
20 believe that the trial will last 5 days.

21 19. **Disclosure of Non-party Interested Entities or Persons.** The parties to this joint
22 statement have complied with the certification requirement of Local Rule 3-16.

23 20. **Other Matters.** At the present time, the parties are unaware of any other matters
24 that may facilitate the just, speedy and inexpensive resolution of this matter.
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1 Dated: February 18, 2008

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21 **Defendant CENTRAL VALLEY**
22 **CONSTRUCTION ENGINEERING, INC.**
23
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1 Dated: February 18, 2008

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